1894-016 Chancery Causes: G. G. Cotrell &c vs. A. A. Arthur, trst.
Lee Co.

Rollins

1 Plat

-Deed

CH-Debt
T-Property

To the Hon. H. S. K. Morison
Judge of the Circuit Court
of Lee County Virginia

Your Petitioners G. G. Cotrell and James F. Rollins, would respectfully represent that A. A. Arthur Trustee, sued out of the clerks office of the County Court of Lee County a writ of Unlawful Entry and Detainer, against your Petitioners for certain lands in this County described in their writ. This writ was dated July 25, 1890 and made returnable to the next term of said Court (Aug) See P. 102 of the record.

writ.

On this writ various proceedings and continuances were had until the February term 1891, when there was a trial thereof and a verdict in favor of the plffs and against your Petitioners, a transcript of the record in this case accompanies this Petition, marked A" and is prayed to be considered herewith.

Upon the trial of this cause your petitioners took 4 bills of exceptions which set out

rulings of the Court Com-
plained of See P. 107. 108, 109
110.
By an inspection of the rec-
ord, it will be seen, that
the pltffs claims possession
by legal seisin, arising from
his title, not actual occupan-
cy, and that this claim of
title, is under one Samuel C.
Jones's heirs, see pltffs testimony
in his bill of exceptions-
Record P 11. It will also be
seen that the defendants
claim under the "Eastern
Kentucky Land Company" and
they under J. W. Divine and the
latter by deed from Samuel
C. Jones by deed with Covenant
of general warranty See
Page 43 of record and on to
Page 98, where it will clearly
appear that Samuel C. Jones
sold & Conveyed the <u>west end</u>
of the Fields Survey, which is
the land in dispute-
Your Petitioners therefore feel
aggrieved therefore that said Court
allowed the pltff to read the
deeds of Samuel C. Jones heirs
and devisees, and his last will

and testament, as evidence of title when they in no way connect themselves with the commencement through said Jones or prove actual seisin. And for failing to exclude the same when the defendants were allowed to read said Jones deed, See deft 2nd Bill of exceptions P 108 of the record. They also feel aggrieved, in the refusal of the court to give the instructions asked for by the defendants and refused and by the giving of those asked for by the pltff.

But your Petitioners feel aggrieved by the action of the Court in refusing to arrest judgement on the verdict and refusing to set the same aside and grant them a new trial because the same is too vague indefinite and uncertain to render judgement thereon. See Page 8 of the record by an inspection of which it will be seen, the said verdict is plainly contrary to the evidence, there was no proof of the land, farm for the pltff.

said verdict is in these words
"We the Jury find for the pltff
between 1/8 to 1/2 of acre of land
that is in dispute and the houses
thereon" By a reference to
G. B. Cockerells testimony
P 90 will be found the ev-
idence to relate to this de-
scriptual - and when it will
be seen there are several
houses on the land claimed by
the pltffs and defendant.
Which therefore did they find
what shape is the land to be
laid off in? Where does
it Begin and how much
goes with each house? and
how much land do they find
"between 1/8 & 1/2 acre - well how
much between these two point
It is humbly submitted that
this verdict is void for un-
certainty and no Court could
give Judgement therefor nor
no Sheriff deliver possession
there of - and is in the very
teeth of the Statute which says
when the Jury find less than
is claimed by the writ the Jury
shall describe it see code of
1887. That must mean a

reasonable description could mean nothing else.

Your Petitioners are advised that error alone in law entitles them to have it set aside and a new trial awarded them.

Besides it clearly appears by the said testimony of G. B. Cockrell, before referred to beginning on P. 90, 91 92 &c and the compromise paper dated July 17th 1888 immediately following ~~that on~~ on Page 95-96, by this paper will it be seen that the plff on said 17 day of July 1888 surrendered and gave up the land in dispute to the E. K. L. Co. and immediately your Petitioners rented from that Company and became its tenants and could not attorn to the plff see instructions of the Court.

For these errors and others to be assigned at Bar your petitioners pray for a writ of error and supersedeas and review of said Cause and as in duty they will ever pray. G. G. Cotrell

James H. Rollins

pr Counsel.

our

Virginia Lee County to wit:
I A. L. Pridemore a practicing attorney in the Circuit Court of Lee County do certify that I have carefully examined a transcript of the record in the foregoing Case of A. A. Arthur-hustle against G. G. Cabell and James H. Rollins and am thereby of opinion that there is error therein and that the same should be reversed.
This April 11th 1891.

A. L. Pridemore
for Deft.

G. G. Cabell &
James Rollins
vs
Petition
A. A. Arthurhustle

A judgment is asked against petitioner for a certain sum of money which will be found due upon the settlement of some accounts for him operating a saw mill and a certain road contract under the clerk of this court in the second of $350 00/100 contributed as the land of the petitioner.
Attest J. H. Hoover
Cl. Ct. of Lee County Va.
April 13th 1891

1893 Judge Dean order of Survey to court.

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Virginia

At a circuit court continued and held for Lee county at the Court house thereof on Saturday the 10th day of June 1893:

G. G. Cottrell et al appellant
vs
A. A. Arthur Trustee appellee

} upon a appeal from a Judgment of the county court

rendered on the 7th of February 1891 refusing to set aside the Verdict of a Jury in this cause # # # # And on the motion of the Plff in this cause by his attorney it is ordered that the survey in this cause be enlarged; and that L. M Carmical Surveyor of this county do go upon the lands in controversy in this cause and survey and lay out the same as either party may require, and that he make out three reports and seven fair plats thereof, and return the same to the court and the cause is continued

A Copy Teste

A. B Munsey clerk

G. G. Cotrell et al

vs } Copy of Order, Survey

A. A. Arthur Trustee

Executed Jan. the 4. 1884

by delivering and offering

copy of the within order

to Luther Carmack

M. E. Flanary S.L.C.

KNOW ALL MEN BY THESE PRESENTS, That we A. L. Pridemore

are held and firmly bound unto the Commonwealth of Virginia, in the sum of Three Hundred dollars, to the payment whereof, well and truly to be made to the said Commonwealth of Virginia, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents, hereby waiving the benefit of our homestead exemptions as to this obligation, and any claim, right, or privilege to discharge any liability arising under this bond, or by virtue of said office or trust, in any currency, funds, counter claims or offsets other than legal-tender currency of United States. Sealed with our seals, and dated 15th day of April, one thousand eight hundred and Ninety one

The Condition of The Above Obligation is Such, That whereas the ~~above bound~~ G. G. Leatrell and James L Rollins

on ~~bill in Chancery against~~

addressed ~~to the Judge of the circuit court of the county of Lee~~, has obtained from the said Judge an injuction ~~to injoin and restrain~~ of the Circuit Court of Lee County, a supersedeas to a Judgment of Unlawful Entery & detainer, obtained in the County Court of Lee County against them by A. A. Arthur Trustee

~~until the future order of the said court; and whereas it is provided, by the order of the said Judge awarding the said injunction, that the plaintiff shall not have the benefit thereof until~~

~~, or some one for , shall enter into a bond, with good security, in the clerk's of of the said court, payable to the Commonwealth of Virginia, in the penalty of~~

~~Dollars, and conditioned to pay all such costs as may be awarded against the said plaintiff~~, and all such damages as shall be incurred in case the said injunction be dissolved. Now, therefore, if the said Leatrell & Rollinson Pridemore shall pay all such costs as may be awarded against them, and all such damages as shall be incurred in case the said injunction be dissolved, then this obligation to be void, or else to remain in full force and virtue.

Executed in the presence of

A. L. Pridemore (SEAL.)

(SEAL.)

(SEAL.)

In the Clerk's Office of the Circuit Court of the County of Lee

This day personally appeared before me J. A. G. Hyatt, clerk of the circuit court of the county of Lee and made oath that estate, after the payment of all just debts, and those for which he bound as security for others and expect to pay, worth the sum of dollars, over and above exemptions allowed by law.

Given under my hand this day of 18 .

Teste: Clerk.

Pleas before the county court of the county of Lee at the court house thereof on the day of 1891.

Be it remembered that heretofore to wit: on the 25th day of July 1890. came A. Arthur Trustee by his attorney, and sued out of the clerks office of the said court a summons in unlawful detainer against G. G. Cottrell and J. F. Rollins which summons, with the sheriffs return there on made, is in the words and figures following to wit:-

The Commonwealth of Virginia
To the Sheriff of Lee County Greeting:
We command you that you summon G. G. Cottrell and J. F. Rollins, if they be found in your bailiwick, to appear before the Judge of our county court, for our said county, at the court house thereof, on the first day of the next term, to answer Alex A. Arthur Trustee, of a complaint that the said G. G. Cottrell and J. F. Rollins are

in the possession of, and unlawfully withholds from the said Alex A. Arthur Trustee, a certain tract or parcel of land and premises lying and being in the said County of Lee and State of Virginia containing 100 acres more or less, and bounded as follows, to wit: Beginning at a poplar and dogwoods above the Cave spring corner to Col. Wm Robinson's Gap tract, thence with a line thereof west 28 poles to two foot oaks and small elm on the side of Cumberland Mountain, thence S16½ W. 28 poles to a stake above 20 yards East of Martin & Beatys and where the line of John Jones 1155 acre tract crosses said Robinsons line, thence with Beaty's line S84 W. 37 poles to a pine and Black oak stumps on the South side of the Gap branch, S 8 E 24 poles to between a black oak and poplar on the new State line, thence with said line West 72 poles to the Kentucky line on the top of said mountain, thence with

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said line northwardly along the top of said mountain 137 poles to a small chestnut on the foot of the bluff above a large flat rock, thence S. 80 E 160 poles to a stake, thence S 68¼ W 126 poles to the Beginning, And have then there this writ, Witness John R. Gibson clerk of our said court, at the court-house, this the 25th day of July in the year of our Lord 1890, and in the 115th year of our foundation.

John R. Gibson clerk.

Executed by delivering office copies of the within Summons to G. G. Cottrell and J. F. Rollins the 29th day of July 1890 this Aug 5th 1890.

Neil Cummings Deputy
Sheriff for A. B. Munsey S.L.C.

And now at this day, to wit:

Virginia.

At a county court begun and held for Lee county at the court house thereof on Tuesday August 5th 1890

A. A. Arthur Trustee &c Pltff. } Summons
vs } Unlawful
G. G. Cottrell & Jas Rollins Defts } entry & detainer.

This day came the parties by their attorneys, and on motion of the defendants the return on said summons is quashed and on motion of the plaintiff leave is granted the officer to amend his said return which amendment was made and the cause is continued until the next october term and thereupon the defendants suggests that the plaintiff is a nonresident of the State and that security for costs be required which security is given.

And at an other day to wit:.

Virginia.

At a county court continued and held for Lee county at the court-house thereof on Thursday Oct 9th 1890

A. A. Arthur Trustee &c Pltff. } Unlawful
vs. } entry and
G. G. Cottrell & James Rollins Defts. } detainer

This day came the parties by their atty's and by agreement this cause

is continued until the first day of the January term next.

And at another day to wit: At a county court continued and held for Lee county at the Court-house thereof, On Saturday January 10th 1891.

A. A. Arthur Trustee &c Pepp vs G. G. Cottrell & Jas Rollins Defts } Unlawful entry and detainer.

Ordered that this cause lie and is hereby continued until the next term..

At an other day to wit: At a county court continued and held for Lee county at the Court-house thereof, On Tuesday Feby 3rd 1891.

A. A. Arthur Trustee &c Pepp. vs G. G. Cottrell & James Rollins Defts } On a summons of Unlawful Detainer.

This day came the parties by their attorneys and thereupon the defendants by their attorneys plead not guilty to said summons. There came a jury to wit: J. F. Coxe, Alexander Clifton, David Lawson, A. G. Scott, Pettis Shelburn

Ransom Hyatt, J. P. Herndon, Wm James.
G. S. Clankinship Jr. Andy Miller.
J. A. Shuffelbarger & Lee Bowling.
who being selected according to law
and sworn the truth to speak up-
on the issue joined and having
heard the evidence in part, and
the time for the adjournment
of the court having arrived said
Jury was adjourned until to mor-
row morning 9 O'clock.

And at another day to wit:
At a county court continued and
held for Lee county at the court-
house thereof, On Wednesday Feb.
4th 1891.

A. A. Arthur Trustee Pltff. } On a Summons
against } of Unlawful
S. S. Cottrell & James Collins Dfts } Detainer.

This day came again the parties by
their attorneys, and the Jury adjourned
over on yesterday appeared in court
pursuant to their adjournment
and having fully heard the evidence
and argument of counsel in part,
and the time for the adjournment
of the court having arrived said

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Jury was adjourned over until to-morrow morning 9 O'Clock.

And at an other day to wit:.
At a county court continued and held for Lee county at the court-house thereof, On Thursday Feby 5th 1891.
This day came again the parties by their attorneys and the Jury adjourned over on yesterday appeared in court pursuant to their adjournment and having fully heard the argument of counsel and being instructed as to their duty and the time for the adjournment of the court having arrived, said Jury was adjourned over until to-morrow morning 9 O'Clock.

At an other day to wit:-
At a county court continued and held for Lee county at the Court-house thereof. On Friday Feby 6th 1891.
A. A. Arthur Trustee & Ref. } On a summons of Unlawful detainer
against
G. W. Cottrell & James Rollins Defts.
This day came again the parties by their

attorneys and the Jury adjourned over on yesterday appeared in court pursuant to their adjournment and were sent to their room to consider of their verdict and after some time returned into court having found the following to wit: "We the Jury find for the plaintiff between 1/8 to 1/2 of acre of land that is in dispute and the houses thereon" And Thereupon the defendants by their attorneys moved the court to set aside said verdict and grant them a new trial because the said verdict is contrary to the evidence & to the instruction of the court and because the same is too uncertain for the court to render Judgment thereon, which motion being argued, the court takes time until to-morrow to consider thereof.

verdict.

And at an other day to wit:
At a county court continued and held for Lee county at the court-house thereof on Saturday July 7" 1891.

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A. A. Arthur Fruster & Peff. } Action of unlawful entry
vs. } and detainer.
A. A. Cottrell & James Rollins Defd.

This day came again the parties by their attorneys. and the court having maturely considered the motions made in this cause on yesterday, by the defendants to set aside the verdict of the Jury rendered against them and grant them a new trial, doth overrule said motion, It is therefore considered by the court that the plaintiff recover of the defendants the 1/8 to 1/2 of an acre of land that is in dispute and the houses thereon, the same being the premises found by the Jury in their said verdict, and that the plaintiff recover against the defendant his costs in this behalf expended, And a writ of possession is awarded the plaintiff to cause him to have the possession, directed to the sheriff of this county and returnable as the law directs.

Be it remembered that upon the trial of this cause the plaintiffs and defendants.

by their attorneys excepted to the rulings & Judgment of the court against them, and tendered their bills of exceptions numbered &c which are signed and sealed by the court and made a part of the record in the cause. And the defendants suggesting that they feel aggrieved by the rulings & Judgment of the court against them, on their motion the execution of the said Judgment is suspended for 60 days upon the said defendants or some one for them executing bond before the clerk of this court in the penalty of $100. conditioned according to law.

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No 3

A. A. Arthur Trustee } Unlawful Entry & detainer
Vs
G. G. Cotrell & J. Rollinder

Be it remembered that the plaintiff to maintain the issue on his part introduced [illegible] proved that he was acquainted with the premises described in the writ in said cause that he had known said premises since the year 66 or 1869. [illegible] were located [illegible] Cumberland Trap [illegible] that [illegible] leaving John C. Polson in possession of said house to whom he rented the house and building standing on said land on the G. G. Cotrell land in Cumberland Trap that when his father first moved in said house it was a [illegible] and that he afterwards as he witness understood purchased said premises that his father died sometime in 1886 that after his death the said John C.

Colson rented the said Store House and Lot from his mother and the devisee of said S. C. Jones said lease and renting to expire on the 1st day of May 1889, that before that time the said widow and devisees of the said Samuel C. Jones sold and conveyed said premises to A. A. Arthur Trustee, That on first day of May 1889 the said John C. Colson who was then together with the defendant G. G. Colwell occupying and using said houses surrendered the possession of said houses to witness as the agent of said S. C. Jones's devisees and that he witness then and there delivered the possession thereof to C. H. Rogers and William

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testimony of William Arthur; that the said J. J. Cottrell [illegible] of said Collori, that said [illegible] said [illegible] said [illegible] to said [illegible] to William [illegible] [illegible] [illegible]

[illegible] said amount
[illegible] tract or parcel of land lying
in the county aforesaid on the south Bluff
side of Cumberland River containing
[illegible] and situated on the
[illegible] of some of Kentucky supposed
to contain about five acres, it being
the same tract or parcel of land conveyed
to said Collins by M. B. Hagan
a special commissioner in a chancery
suit lately decided in the Circuit
Court of the County aforesaid in which
said Collins was plaintiff and Mary
Collins et al were defendants by deed
bearing date on 20th [illegible] 76 the same deed
reference to which is [illegible] for a description of the
[illegible] in Cumberland River [illegible]
[illegible] road, thence along the edge of
said road [illegible] 263 poles to a [illegible] on
George Williams' line thence [illegible] 134 poles
to a stake [illegible] due [illegible] to
a stake [illegible] 44 [illegible]
[illegible] 134 poles to a white oak
[illegible] and with the
[illegible] 134 poles to the beginning containing
[illegible] acres [illegible]
[illegible] at a corner [illegible]

~~15~~

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at made

aforesaid, filing the following and
being the 4th day of March in the
year of our Lord one thousand eight
hundred and seventy-eight, the
depositions of Benjamin Franklin
Wooden, Thomas J. Wooden of the
Samuel C. Jones, the plaintiff
the day and proceeded
the said Wooden, the
dead for the hearing thereof, the
said deed being duly proved
admitted to record.

Extract from the Deed Book
Office recorded from Marshall Wooden
and wife et als heirs of A. D. Wooden
deceased, to Samuel C. Jones dated on the
day of [illegible] which was recorded
in figures following to wit:-
This Deed made and entered into on this
the 2nd day of March 1879 between the
Grantor and Jane Wooden his wife of the
County of Jefferson Parties of
the first part and William
Wooden Jr. and Angeline Wooden his
wife, Marshall Wooden and Angeline
his wife of Baltimore County of
the second part and Samuel C. Jones

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(21)

of Lee County Virginia of the other part
Witnesseth that for and in consid-
eration of the sum of Four hundred
dollars the receipt of which is hereby
acknowledged the said parties of the
first part who are being Andrew
R. Hodson and wife have bargained
and sold, bargained, sold and by
this deed do hereby grant, bargain,
sell and convey to the said Samuel
C. Jones of the second part one half
of 6/7 of a fifty acre tract of land
by Daniel Hopkins in his life to
George Williams, and which was after-
wards sold under a decree of the
Circuit Court of Lee County in a
suit M. L. Hidson's Commissioner and
conveyed by his deed to said
Hodson and reference to said deed
of record is made for the metes
and bounds of the said land, together
with all the appurtenances to the same
belonging the said Samuel C. Jones to
have and to hold forever and the said
parties of the first part do covenant
and warrant to and with the said Samuel
C. Jones that they will never
[illegible]

Samuel C. [illegible], deceased, date [illegible] 13th day of August 1844, personally appeared before us in Claiborne County Tennessee, we being each present together at the same time, and [illegible] the [illegible] June 17 [illegible], [illegible] Jonathan Wooden and [illegible] and each of them [illegible] and upon [illegible] to the [illegible] Commissioned [illegible] and fully [illegible] plained to [illegible] in the absence of their said husband, they and each of them understanding that they [illegible] and willingly executed the [illegible] and do not wish to retract it, and desired us to certify [illegible] Court of Lee County Virginia, [illegible] under our hands and seals, this the 21st day of March 1844.

T. H. Hamilton J. P. Seal
J. C. F. [illegible] J. P. Seal

Justices of the Peace Claiborne County Tennessee,

Virginia Lee County, [illegible] Office March 1844 [illegible] the foregoing [illegible]

[illegible] from [illegible] Nesler and [illegible] his wife [illegible]
[illegible] Purcell & Frances his wife [illegible]
[illegible] Gordson and [illegible] his wife [illegible]
[illegible] Allred and [illegible] in case of the one
part to Samuel C. Jones of the other
part, was this day admitted to record
upon the certificates of J. A. Jones
and J. C. [illegible] two justices of the Peace
in and for Richmond County Tennessee.

Test James H. Cornelius Clerk.

Also the Will of Samuel C. Jones dated
on the day of 1878 and on the
words and figures following to wit:

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29'

Cont

County Court Clerk Lawrence County Tennessee

[illegible]

29

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[illegible]

[illegible]

[illegible]

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A. A. Arthur Trustee.
v
G. G. Cottrell et al

Be it remembered upon the trial of this cause the Defts. to maintain the issue upon their part introduced a Patent from the Commonwealth of Virginia to Nathan Fields dated Jany 27th 1796, and in the words and figures. to wit: —

Robert Brooke Esquire Governor of the Commonwealth of Virginia

To all to whom these Presents Shall Come Greeting:

Know Ye. That in conformity with a Survey made on the 20rd day of March One thousand Seven hundred and 95 by virtue of Land office Treasury Warrant No 1129 issued the 30th day of January 1795 there is granted by the said Commonwealth unto Nathan Fields a certain tract or Parcel of Land, containing Seven

thousand and eighty (7080) acres lying and being in the county of Lee and is bounded as follows to wit:- Beginning at a poplar and black oak near the Kentucky road opposite Richard Davis's on Yellow creek and running thence N 67° E 82 poles crossing said road to a bunch chestnut oak and dogwood by a small branch thence N 85° E 160 poles crossing a branch at 100 poles to two black oaks and a hickory in a gap S 22° E 74 poles to two white oaks hickory sapling on a line of Arther Campbells S 85° E 266 poles crossing a large spring branch at 100 poles and a branch at 200 poles to a large poplar and black oak by a small branch N 20° E 124 poles to a black oak and Dogwood in a broken valley N 55° E 580 poles crossing a branch at 94 poles and a branch at 400 poles to two white oaks and a pine N 69° E 386 poles a branch at 152 poles and a large branch at 192 poles and a branch at 288 poles to a poplar in the

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edge of a valley N 50 E 372 poles crossing a branch at 98 poles and a branch at 240 poles, and a branch at 292 poles to a chestnut red oak and black oak on a spur N 65° E 560 poles, crossing a branch at 294 poles and a branch at 400 poles and a branch at 490 poles passing a bank of Iron ~~ore~~ at 520 poles to a chestnut and poplar near a creek N 50° E 316 poles crossing a creek at 70 poles to a red oak and two chestnut oaks on a spur N 70° E 656 poles crossing a branch at 234 poles and a branch at 280 poles and a branch at 360 poles and a branch at 420 poles and a branch at 570 poles to two black oaks two white oaks and a small Dogwood N 23° W 548 poles crossing Martin's Creek at 340 poles to three chestnuts thence S 55½° W 3432 to the Beginning with its appurtenances. To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said Nathan Fields and his heirs forever.

In Witness Whereof, The said

Robert Brooke Esquire Governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the Lesser Seal of the said Commonwealth to be affixed, at Richmond, on the 27th day of January in the year of our Lord, one thousand seven hundred and 96 and of the Commonwealth the 20th.

Robert Brooke

Land office Richmond Virginia.
The foregoing is a true Copy from the records,

Witness my hand and seal of office this 13th day of May, 1887.

J. A. Wingfield Reg.
Land office.

He then introduced an order of the Circuit superior court of law and Chancery, in the words and figures following to wit: Virginia = At a circuit superior court of law and Chancery continued and held for Lee County at the Court house thereof, on Thursday the 14th day of September 1837.

Claiborne Anderson is appointed Commissioner of delinquent and forfeited lands for this; — and thereupon the said Claiborne Anderson took the oath in open court required by law, and with Stephen Jones and Robert W. Wynn, his securities, entered into and acknowledged in open Court a bond in the penalty of One Thousand dollars payable to the Governor of the Commonwealth Conditioned as the law directs.

They then introduced the deed of Claiborne Anderson Comr, &c to John M. Beaty and Robert M. Ely in the words and figures following to wit:—

This Indenture, made the 17th day of August 1842 between Claiborne Anderson Comr. of delinquent and forfeited lands for Lee County Virginia, of the one part and John M. Beaty and Robert M. Ely of the County and State aforesaid of the other part, Witnesseth, that whereas a certain tract or parcel of land

or so much thereof lies in Lee county Virginia, Situated on the Cumberland Mountain, thirty five miles West of Lee court House and charged upon the land book of said County in the name of Nathan Fields the owner thereof which tract entire contains 70 80 has been returned Delinquent by law. In the name of Nathan Fields for the arrearages of taxes due thereon up to the year 1840, And whereas the said Commissioner having been duly and legally appointed for that purpose, by order of the circuit superior court of law and Chancery of Lee County, made his report to said court pursuant to law. in which the portion of said tract of land lying in Virginia was reported delinquent and forfeited in the name of Nathan Fields for the non payment of the said taxes due therein up to the year 1840, aforesaid, And whereas the said court pursuant to the Act of Assembly entitled an act to amend and explain the laws concerning waste

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land titles and for other purposes" passed March 3rd 1837. did on the 11th day of April 1840, render a decree requiring the said Commissioner to to make sale of the said part of the said tract of land (with others) pursuant to the terms of said decree and pursuant to law, And whereas the said Comr, in obedience to said decree after having duly advertised the said portion of said tract of land pursuant to law, And the said taxes and damages charged thereon not having been paid on or before the day of Sale fixed upon in said advertisement according to the terms of said decree and according to law, did on the 15th day of June 1840 being the first day of the June Court, offer the said portion of said tract of land for sale at Public Auction at the front door of the Courthouse of said County to the highest bidder pursuant to the terms of said decree, to satisfy the taxes and damages aforesaid, And the said portion of said tract of land being

Pursuant to said decree &c

offered for sale as aforesaid, by the said Commissioner pursuant to said decree and pursuant to law. And the said John M. Beaty and Robert M. Ely having offered to pay the sum of One dollar and fifty cents for the said portion of said tract of land and being the highest bidder therefor the same was knocked off to them through John M. Beaty who bid for them at the price of one dollar and fifty cents aforesaid which has been fully paid, Now this Indenture further Witnesseth, that the said Blaiburn Anderson Commissioner as aforesaid, for and in consideration of the sum of one dollar and fifty cents, to the said Anderson in hand paid by the John M. Beaty and Robert M. Ely the receipt of which is hereby acknowledged, hath bargained sold and conveyed and by these presents doth bargain sell and convey unto the said John M. Beaty and Robert M. Ely and their

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heirs forever, The said portion of said tract of land lying Virginia as aforesaid, with all and singular the appurtenances thereunto belonging and the said Claiborne Anderson Commissioner as aforesaid by virtue of the authority invested in him by the said decree and by law. doth hereby convey assign and transfer to the said John M. Beaty and Robert M. Poly and their heirs all the estate right title interest and claim to the said portion of the said tract a parcel of land aforesaid with the appurtenances aforesaid which he is authorized to convey under said decree and which was vested in the said Nathan Fields to have and to hold, unto the said John M. Beaty and Robt M. Poly and their heirs forever, In Witness whereof the said Claiborne Anderson hath hereunto set his hand and affixed his seal the day year first above written

Claiborne Anderson Com Ex

Lee County Court Clerk's office
the 3rd day of January 1843. This
Indenture of bargain and
sale for land between William
Anderson Commissioner of
Delinquent and forfeited lands
for Lee County of the one part
and John M. Beaty and Robert
M. Ely of the other part was
acknowledged before me and
admitted to record.

G. W. S. Morrison Clk
A copy of Record
Teste John R. Gibson Clerk.

They then introduced a deed of
John M. Beaty & wife & Brittain
to John F. Tyler which is in
the words and figures fol-
lowing to wit:
This Deed made this 4th day of
December in the year 1868
between John M. Beaty and Sarah
J. his wife of Lee county in the
State of Virginia and Brittain
Potter and Francis B. Potter of
Buchanan County in the State
of Missouri parties of the

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first part and John F. Tyler of said county of Buchanan in the State of Missouri the party of the second part, Witnesseth, that whereas the said John M. Beaty and Brittain Poteet of the parties of the first part did in the lifetime of Henry C. Tyler bargain and sell to the said Henry C. Tyler the land hereinafter mentioned and described the purchase money for which was fully paid to them by the said Henry C. Tyler in his lifetime and no conveyance of the legal title thereto was made to him while he lived and he afterwards leaving the said John F. Tyler the said party of the second part his only child and heir, now therefore in consideration of the premises & in further consideration of the sum of one dollar to them now in hand paid by the said John F. Tyler the receipt whereof is hereby acknowledged the said parties of the first part

do hereby grant bargain sell and convey to the said John F. Tyler the said party of the second part the following tracts and parts of tracts of land lying and being in Claiborne county in the State of Tennessee in Lee county in the State of Virginia, and in Knox county (now Josh Bell) county the State of Kentucky, being the same lands which were conveyed by Martin Beaty and William Beaty to the said Beaty and Poiert by deed bearing date on the 26th day of June 1841, and duly recorded in the office of the clerk of said county court of the said county of Lee that is to say a part of a tract of Eleven hundred and fifty five acres Patented in the name of John Jones by Patent bearing date on the second day of August 1796, lying and being in the said County of Claiborne and Lee and bounded as follows, Beginning at a large and spread gum trees on Watkins line on the bank

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of Gap Creek a corner of Arthur Campbell's lands thence W. 60 poles to a large white oak above the head of a spring N 8 E 152 poles to a large poplar on the side of the mountain called Cumberland Mountain, thence 35° E 220 poles to a black Black oak and poplar at a large rock, on the side of the Mountain thence N 8 W 80 poles to a pine and Black oak (crow down) near the old Kentucky Road, thence N 84° E 500 poles to a pine, thence N 60 E 70 two beech trees, one on each side of the big road leading from the Gap to Jonesville near the west edge of a branch, thence with said road to where the dividing between the said 1155 acres tract and the 3000 acre tract crosses said road, thence with the said dividing line to the Beginning also so much of the Robinson tract as lies outside of the said 1155 acre survey, supposed to contain three acres more or less

also one undivided half of one hundred acres of land lying in Cumberland Gap adjoining the said 1153 acres on the west side, patented in the name of Robert Beaty and David Chadwell Senr. also one undivided half of a fifty acre tract held in partnership with Isaac Dickinson including a stone coal bank patented in the name of William Beaty and Thomas Jones lying on Little Yellow Creek. also another fifty acre tract lying on Little Yellow creek patented in the name of William Beaty and Patent bearing date the 10th day of August 1837 including a stone coal bank for the courses and distances of which reference is made to the said patent; also one undivided half of another fifty acre tract patented in the name of William Beaty and Harrison Edds lying and being in the said County of Knox and on Davis's land a fork of Yellow creek the boundries

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of which are shown by the said patent to which reference is made; also one other entire tract of fifty acres lying and being in the said county of Knox patented in the name of William Beaty by patent bearing date on the 13th day of February 1826 situated on Davis's Branch a small fork of Little Yellow Creek below David Hagan's afterwards, Isaac Dickinson's place, reference being made for the boundaries thereof to the said patent, also of the said John M. Beaty's undivided interest in a large survey lying on the south side of Cumberland Mountain in the said county of Lee (the said interest being in acreage only as lies in the said county of Lee) known as the fields survey and conveyed to the said John M. Beaty and Robert M. Ely severally and jointly by Claiborne Anderson Commissioner of Delinquent and Forfeited lands by deed bearing date on the 17th day of August 1842 and duly recorded in the clerks office

[illegible] for said
aforesaid for a more extended
description thereof reference is
made to the said deed and the
is excepted from conveyance by
this deed so far only as it has
effect as a conveyance of the said
Tolleet and his said wife of the
title to said lands, so much of
said lands as were sold by the
said Tolleet and Henry B. Tyler
in his life time to William Hamil-
ton. This deed being intended to con-
vey to the said John F. Tyler the
title to the said Hamilton only
of the said John M. Beaty and
wife, To have and to hold the
said tracts of land together with
the mill houses and all appurtenances
thereto belonging to the said John F. Tyler
and his heirs forever, and the said parties
of the first part do [illegible] and
that they will warrant generally so much
of said lands as lies in the said counties
of Lee and Claiborne and Josh Bell
County in the State of Kentucky
adjoining the Gap lands, and that
they will warrant specially so much

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of said lands as his as aforesaid on Little Yellow Creek and its branches in said State of Kentucky, except that the said John M. Beaty and his wife hereby covenant to warrant Specially only their said undivided interest in the Fields survey, and the said Potter and wife do not covenant to warrant at all as to the said Beatys and undivided interest in the Fields Survey, Witness the following Signatures and seals

Witness as to Beatys wife
Henry F. Morgan
Henry Fyler.
Witnesses as to Potter & wife
Samuel J. Riley
John Williams

John M. Beaty (Seal)
Sarah J. Beaty (Seal)
Brittain Potter (Seal)
Fr[illegible] (Seal)

Lee County, ~~Clerk's~~ office, the 4th day of December 1868 This Indenture of bargain and sales for land between John M. Beaty and Sarah J. Beaty, his wife and Brittain Potter and Frances B. Potter his wife, of the first part and John H. Fyler of the second part, was this day acknowledged before me by the said John M. Beaty to be his act and deed

and Sarah Beaty wife of the said John M. Beaty being examined by me privily and apart from her husband and having the deed aforesaid fully explained to her, she also acknowledged that she had willingly signed and executed the same and did not wish to retract it. Given under my hand as Clerk of the County Court of Lee County this 4 day of December 1868

Henry J. Morgan Clerk

State of Missouri }
County of Buchanan }

Be it remembered that on this 23rd day of January A. D. 1867, before me a Notary Public duly commissioned and qualified residing in the city of St Joseph in the County aforesaid personally appeared Brittain and Frances B. Poteet who are personally known to me to be the same persons whose names are subscribed to the foregoing deed as parties thereto and they acknowledged the same to be their act and deed for the uses and purposes therein mentioned, and she the said Frances B Poteet being

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ley one first made acquainted with the contents of the foregoing deed on an examination seperate and apart from her said husband acknowledged that she had executed the same and relinquished her dower in the real estate therein mentioned freely and voluntarily and without any undue influence of her said husband, In witness whereof I have hereunto set my hand and official seal the day and year last above written

John Williams
Notary Public

John Williams
Notary
Public
St Joseph.
Buchanan

State of Missouri,
County of Buchanan } ss.

Be it remembered that William Poteet and Frances B. Poteet his wife whose are personally known to the undersigned Clerk of the Circuit Court, within and for said County said County to be the persons whose names are signed to the foregoing

deed as parties hereto this day.
Appeared before me and acknowledged that they executed and delivered the same as their voluntary act and deed for the uses and purposes therein contained And the said Frances B. Poteet being by me made acquainted with the contents of said Deed acknowledged on an examination apart from her said husband that she executed the same and and without compulsion or undue influence of her said husband, Given under my hand and seal of said court this 23rd day of January 1869.

Frank G. Hopkins Clerk
By E. Stoole Dep. Clerk.

Lee County Court Clerk's office the 1st day of Sept 1869. This Indenture of bargain and sale for land between John M. Beaty and Sarah J. Beaty his wife, and Brittain Poteet and Frances B. Poteet his wife of the first part and John H. Tyler of the second part, being duly stamped in

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admitted to record upon the certificates of John Williams Notary Public duly commissioned and qualified residing in the City of St Joseph in the county of Buchanan, and state of Missouri and the Clerk of the Circuit court within and for the county of Buchanan and State aforesaid to the A Britten Potter and Frances B. his wife

John B. West D. Clerk

They then introduced the deed of John H. Tyler & wife to John G. Newlee. which is in the words and figures following to wit.

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~~John~~ This Indenture made and entered into this Seventh day of June Anno Domini 1871 between John F. Tyler & Jane E. Tyler his wife of the county of Buchanan & State of Missouri parties of the first part and John D. Newell of the county of Claiborne and State of Tennessee party of the second part Witnesseth, That the parties of the first part for and in consideration of the sum Five Thousand dollars to them in hand paid by the said party of the second part the receipt whereof is hereby acknowledged have this day granted bargained and sold and by these presents do grant bargain and convey unto the said party of the second part the following tracts parts of tracts of land lying and being in the County of Claiborne and State of Tennessee in the County of Lee State of Virginia & in the county of Josh Bell in the State of Kentucky and being the same lands conveyed by Martin Beaty & William Beaty to

Beaty & Poteet by deed bearing date the 26th day of June 1841. and duly recorded in the office of the clerk of the county court of the said county of Lee, that is to say, — part of a tract of eleven hundred & fifty five acres patented in the name of John Jones by patent bearing date 2nd of August 1796. & lying and being in the said county of Lee and Claiborne and bounded as follows to wit, Beginning at a large and small gum trees on Walker's line on the bank of Soap creek a corner of Arthur Campbelles land thence west sixty poles to a large white oak above the head of a spring, thence north 8° east 110 poles to a large poplar on the side of the mountain called Cumberland mountain, the north 35° East 220 poles to a blackoak and popular at a large rock on the side of the mountain the North 8° West 80 poles to a pine and black oak (now down)

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near the old Kentucky road
thence S. N. W. 84° East 300 poles
to a pine, thence North 65° East
to two beach trees, one on each
side of the big road leading
from the Gap to Jonesville near
the West side of a branch, thence
with said road where the dividing
line between the said 1155 acre
Tracts & the 3000 acre tract cross
es said road, thence with said
dividing line to the place of begin
ning.
Also so much of the Robinson tract
as lies outside of the said 1155 acre
tract and supposed to be three
acres more or less.
Also the one undivided half of
one hundred acres of land in
Cumberland Gap adjoining the 1155
acre tract on the west side, and
patented in the name of Robert
Beaty and David Chadwell. to
Also the undivided half of a fifty
acre tract held in partnership at
one time with Isaac Dickinson in-
cluding a stone coal bank & patented
in the name of William Beaty

and Thomas Jones & lying on Little Yellow creek.

Also another fifty acre tract lying on little Yellow creek & Patented in the name of William Beaty by patent bearing date 10th of August 1837 & including a stone coal bank & for the courses and distances of which reference is made to said patent.

Also the undivide half of another fifty acre tract patented in the name of William Baties and Thomas Tools and lying & being in county of Josh Bell and State of Kentucky on a fork of Yellow creek the boundaries of which are shown by the said patent.

Also one other entire tract of fifty acres lying and being in said county of Josh Bell and which was patented in the name of William Beaty by patent bearing date the 13th of Feby 1826 & situated on Levis branch, a small fork of little Yellow creek for the particular courses and bounds of said last mentioned tract reference is made to the patent therefor.

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Also all the right title interest and estate that the parties of the first part had or owned on or before was acquired in to the following described land under a deed executed by John M. Beaty Sarah G. Beaty, Britton Potter & Frances B. Potter & bearing date the 4th day of December 1868. (to wit) a large survey of land lying on the South side of the Cumberland Mountain in the said county of Lee & known as the Fields survey & which tract piece or parcel of land is more fully and clearly described in a deed of conveyance executed by Malcibarne Anderson commissioner &c to John M. Beaty & Robert M. Bay which deed bears date the 17th day of August 1842 and is of record in the clerks office of the county court of Lee County Virginia, To have and to hold the said tracts and parcels of land together with all and singular the appurtenances thereunto belonging or in any wise appertaining to the said party of the second part his heirs and

forever and the said parties of the first part will and they do hereby warrant and defend the title hereby given to the said party of the second part his heirs and assigns forever. Given under our hands and seals day and date first above written.

John F. Syler (Seal)
J. E. Syler (Seal)

Witnessed by
John Williams
Daniel J. Riley

State of Missouri.
County of Buchanan } ss.

Be it remembered that John F. Syler and Jane E. Syler his wife who are personally known to the undersigned clerk of the circuit court within and for said county to be the persons who names are signed to the foregoing deed as parties thereto this day appeared before me and acknowledged that they executed and delivered the same as their voluntary act and deed for the uses

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and purposes therein contained and the said James E. Tyler being by me made acquainted with the contents of said deed acknowledged on an examination apart from her husband the she executed the same and relinquished her dower in the real estate therein contained freely and without compulsion and undue influence of her said husband Given under my hand and seal of said court this 7th of July 1871.

(Seal) William Rabin Camp Clk.

This deed was filed in my office and noted for registration April 14th 1873 at 10 o'clock A. M. and registered in book G. Page 370 May the 10th 1873.

P. G. Fulkerson
D. Register

State of Tennessee
Claiborne County }.

I, Jefferson Lambert Register of deeds for said County do certify the the foregoing is a true and perfect copy of a deed from John F. Tyler & wife to John G. Hawkes

as the same appears of record in my office in Book G. page 370-371 & 372 after a careful comparison

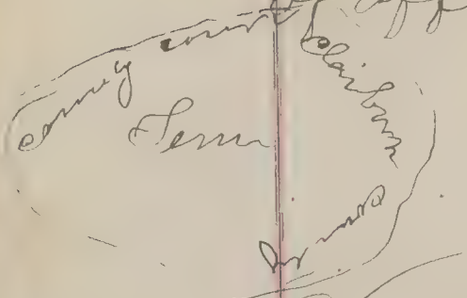
Witness my hand at Tazewell Tenn this 16th day of April 1890

Jeff Lambert
Register for sd County.

State of Tennessee
Claiborne County } I, A. J. Francisco County court clerk in and for said county certify that Jeff Lambert whose genuine signature appears to the above certificate is register of deeds for the county of Claiborne State of Tennessee and all his official acts as such are entitled to full faith & credit. Witness my hand and seal of office in Tazewell.

This 16th day of April 1890.

A. J. Francisco Clk.



Virginia Lee County to wit.

In the office of the Clerk of the said County May 19th 1890 this deed was presented and with the certificate thereto annexed admitted to record

Teste John R. Gibson
Clerk

They then introduced a copy of the record in the cause of Smith Crabtree against Thos. S. Ely Sheriff of Lee county and as such admr. of John G. Newlee and the heirs of said Newlee which is in the words and figures following to wit.

Virginia:

Here begun and held in and for the County of [illegible] at the Court House thereof on the thirteenth day of February 1872.

The Commonwealth of Virginia:

To the Sheriff of Lunenburg County:

We Command you to summon, Thomas [illegible], Sheriff of the County aforesaid and as such Administrator of the Estate of John C. Davis and William F. Davis John H. Divine and Charline Divine his wife and Frank Blanchard Infant Children of Charity Divine to appear before the Judge of the Circuit Court of the County at the Court House in the Sheriff's Office on the first Monday in March next to answer a Bill in Chancery exhibited in said Court against them by Robert [illegible] and others. Bill in Chancery. [illegible] the Estate of John C. Davis [illegible]

[illegible]

[illegible]

[illegible]

[illegible] a bonus [illegible] first
[illegible] of the [illegible] of [illegible] and
all the rest of the residue of his estate
of which [illegible] died seized, [illegible]
[illegible] respectfully [illegible] that
on the 1st day of September 1871, one
Peter V. Neisler executed and delivered
to [illegible] his written obligation
bearing that [illegible] was indebted
unto [illegible] and sealed with
his seal and by which he acknowledged
and bound himself to pay [illegible]
on or before the 1st day of March next
thereafter the sum of $[illegible] and interest from
the date thereof, on consideration that
[illegible] in Hand paid [illegible]
[illegible] at his residence
and [illegible] payment is made, that
the said [illegible] a good and legal
present [illegible] and by the [illegible]
[illegible] said debt to the [illegible]
[illegible] on such stipulations
as the said Peter V. Neisler [illegible]
and which [illegible] were [illegible]
[illegible] to pay the [illegible] September
1871, [illegible] and [illegible]
[illegible] the conditions [illegible]
said [illegible] by [illegible]

the said suit at his own costs, and by employing a good and sufficient general receiver to close the in Controversy as directed by the said John J. Powell, and which was accepted by him.

The said written obligation and these Orators written agreement and acceptance of the terms therein is percent stock market "A" and, more short of his Bill, and is subject to benefit of $2.00 a hundred shares. After now the said Defendant, in order to be quite to be protection on the 15 day of October, the provisions to the Bill, protection and the letter is herein filed marked "B", and made a part of the Bill. Afterwards on the 8th day of August 1873, the said Defendant Jennie again wrote to Orators protection confirming the justice of the Bill, which letter is filed herein marked "C", and made a part of the Bill.

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[illegible] real estate [illegible] and [illegible]
[illegible] in [illegible]
[illegible]
[illegible] which [illegible]
[illegible] to the [illegible]
[illegible] to [illegible]
[illegible] to [illegible]
[illegible] of [illegible]
[illegible] in [illegible]

Now this is a [illegible]
[illegible] is to [illegible]
[illegible] of the [illegible]
[illegible] to [illegible]
the [illegible] belonging to his estate and
discriminate [illegible] and [illegible]
[illegible] to the [illegible] of the [illegible]
and liabilities that may [illegible]
proceeds against his estate [illegible]
especially [illegible] and debt.

And your [illegible] being without
an adequate remedy at law [illegible]
able only in a court of chancery, he
prays therefore that the [illegible]

[illegible]

[illegible]

[illegible]

(12)

[illegible]

Exhibit "E."

[illegible]

Exhibit "E."

[illegible]

13

I pay the money, the notes are given in good faith and will be paid as soon as possible.

I write this as a [illegible] request that [illegible] the notes if I get the most, if I do not obtain it I do [illegible] the distribution of the [illegible] proceeds of the Estate this Reversion [illegible]

[illegible]

[illegible]

[illegible] to [illegible] the [illegible] of the [illegible]
[illegible] [illegible] [illegible] to [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
subject thereto to the payment of the
debts and distributive shares that may be
found [illegible] against said Estate and
depending upon the payment of said
debts [illegible] [illegible] [illegible]
[illegible] and interest at [illegible] [illegible]
[illegible] [illegible].

This cause is depending and the
debt is [illegible] in the District Court of
the Western District.

The said trust of [illegible] and [illegible]
Estate [illegible] [illegible] [illegible]
[illegible] is sought to be [illegible]
Subject to the acts and [illegible] [illegible]
the estate of John [illegible] [illegible], by their
deed [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]

17

Fowler deceased and Thomas S. Fowler his administrator and William M. Fowler, John W. Fowler [illegible] and Jacob Slaughter and Eugenia Slaughter [illegible] estates are intended to be effected by this bill and suit in chancery and this memorandum of lispendens is left with the Clerk of the Court of the County of Lee in which said land and real estate &c is situated which should forthwith record same in the deed books in his office and index the same by the name of the respondent [illegible] this 15th day of March [illegible] February 1877 [illegible] by his [illegible]

David Miller.

Virginia Lee County Court Clerk's Office February 15th 1877.

The foregoing memorandum of lispendens of David Miller for a bill against Thomas S. Fowler & others defendants was this day filed and left with me Clerk of the Court of the County in which the land and real estate is situated

[illegible]

[illegible]

these assets are to be turned to Edward [illegible]
Sheriff of this County for administration
so far as these assets are [illegible]

[illegible]

28 Defendant Thomas H. [illegible] Administrator of the Estate of John C. Fowler deceased the sum of $[illegible] and interest thereon from the first day of [illegible] 18[illegible] hereinbefore and the costs of this suit subject to credit as admitted by [illegible] of $[illegible] and [illegible] to be made out of [illegible] [illegible] to the estate [illegible]

[illegible] it is [illegible] further considered, ordered and decreed that Mary C. Brown Administratrix of the estate of [illegible] Brown deceased, [illegible] Thomas H. [illegible] Administrator of the Estate of John C. Fowler deceased, the sum of $[illegible] with interest thereon from the [illegible] day of [illegible] hereinbefore subject to a credit of $[illegible] and that the two [illegible] of them the costs within [illegible] be paid [illegible] [illegible] and [illegible] the costs and the balance of [illegible] John C. [illegible] received below, by to their respective [illegible]

turned at the end attached and
carried [illegible] two cords [illegible]
[illegible]

COURT OF
WICHITA

They then introduced a deed from David Miller to Samuel C. Jones. Dated January 1st 1880. which is in the words and figures following to wit:

(73)

and Confirmed

(74)

Cover

(75)

76)

They then introduced a deed from Samuel C. Jones to J. W. Irwin dated Sept 28th 1881, which is in the words and figures following to wit:

(77)

(78)

(79)

(79)

They then introduce a copy of the record in the case of J. W. Divine against Margaret Ely & others (Devarcs & Bitgure) which is in the following ~~words~~ to wit:

[illegible]

The premises described in the [illegible] proper to the said [illegible] [illegible] be [illegible] the defendant to [illegible] [illegible] its obligations [illegible] [illegible] [illegible] to be [illegible] [illegible].

[illegible] a [illegible] be considered directing partition to be made of said [illegible] and for all other [illegible] [illegible] [illegible] issue.

[illegible]

[illegible]

And [illegible] at the [illegible] point to the [illegible] [illegible] at the [illegible] [illegible] [illegible] [illegible] [illegible]

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(5)

to file his [illegible] and the [illegible]
[illegible]

[illegible]

[illegible]

[illegible]

Respectfully yours [illegible]

[illegible]

Plat of Stephen Foster's Survey.
Patented March 23rd 1875

Containing [illegible] acres
and surveyed by
J. H. Devine, Deputy Surveyor
under the Lines of
R. M. Clay, Chief. The Lands lying N.E.
a division made by order of the Circuit Court
August, 1886. The West half 210 8/10 acres to
J. H. Devine.
The East half 210 8/10 acres to
Clay Heirs

E. B. Johnson
Jno. B. Richmond
Wm. Ross
Commissioners

March 15th 1887
Scale
100 feet to the inch

C. B. Johnson
Chief Surveyor

North
Stephen Foster's Land
Clay Heirs
Road
Stephen Foster's Land
Road
Clay Heirs
Road
Clay Heirs
Road
Clay Heirs

.....*Court.*

.....*County.*

FINES.

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1 Σ

UNIVERSITY OF CALIFORNIA
LIBRARY

A. She then introduced a deed from L. Fridemore comr. to J. W. Divine dated June 25th 1887. which is in the words and figures following to wit.

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they then introduced a paper purporting to be a deed from J. W. Irvine & wife to the Eastern Kentucky Land company dated 19th Day of December 1887 which is in the words and figures following to wit:

This indenture made and entered into on this [illegible] th day of December 1887. by and between J. W. Divine and wife Ida M. Divine of the county of Claiborne and State of Tennessee of the first part and the Eastern Kentucky land company of Mount Sterling Kentucky of the second part Witnesseth that [illegible] of the first part for and in consideration of the sum of twenty thousand dollars ten thousand in hand paid the receipt whereof is hereby acknowledged by the parties of the first part and ten thousand dollars to be paid on or before the 2nd day of October 1888 for which sum of ten thousand a note has been executed bearing even date with this instrument bearing no interest until due the said parties of the first part have bargained and sold and by these presents bargain and convey unto the party of the second part all the right title claim interest and demand they have in and to the following described tract or parcel of land [illegible]

in the county Lee and State of Virginia on the waters of Indian and Gap creek and being the west end of the Walker Fields survey conveyed to the parties of the first part by A.L. Dickenson a special commissioner and is bounded as follows, Beginning at a stake on the Virginia and Kentucky line west of Cumberland Gap thence S 17 E to a stake in the Walker Campbell line thence N 88 E passing the corner of the Fields survey and with the line of said survey 81 P. to a stake on the west side of a branch corner with Dr Henderson thence N 38 E to two small pines in the Baker line thence N 60 E 33 P. to a stake in a oak thence N 81 E 44 P. to a poplar thence N 58 E 287 P. to two white oaks in an offset thence N 72½ E 177 P. to a poplar stump in the edge of a valley poplar down and a white oak marked in lieu of it thence N 53½ E 266 P. to a white oak chestnut oak and maple corner made as the divisional corner between J.W. Divine and the heirs of R.M. Daly thence N 244 P. to a stake on the Virginia and Kentucky line with a black oak and hickory

(86)

thence with the Virginia and Kentucky line along the top of Cumberland mountains westwardly until a line recently run by General Duffield under orders from the United States Circuit Court, to a point on the edge of a cliff thence S 57 E to the beginning. But it is expressly understood that the line between the two States shall be the true line wherever it is ascertained established also all the lot piece or parcel of land lying on the Virginia and Tennessee line containing the cording mill and mill site [illegible] with the reservation of water power also the reservation of one half interest in sixty feet square as shown by the deeds of the parties of the first part to Stuart the [illegible] recorded in the Register's office of Claiborne County Tennessee, to have and to hold the premises herein described with all and singular their appurtenances to the said party of the second part their heirs and assigns with title of general warranty forever. And the parties of the first part covenant with the party of the second part

are lawfully seized and possessed of said lands and that the same are unencumbered, But it is understood That [illegible] the first part only quit claim their interest in that portion of the first tract herein conveyed lying west of a [illegible] 19 west line from the north west corner of the [illegible] eleven hundred and fifty five acres [illegible] But a lien is expressly retained upon the lands herein conveyed to secure the payment of the note [illegible] for the purchase money [illegible], In testimony whereof the parties of the first part have hereunto set their hands the day and date first [illegible]

J. W. Divine
Ada M. Divine

State of Tennessee
Claiborne County } P. T. G. Falkerson a Notary Public for the county aforesaid and State aforesaid do certify that J. W. Divine whose name is signed to the within writing [illegible] date [illegible] 1887 has acknowledged the same before me in the [illegible] aforesaid. Given under my hand and seal this 17th day of December 1887. 1890 term of office expires Jan 1st 1892.

P. T. G. Falkerson Notary Public for Claiborne County Tennessee

P. T. G. Notary Public
Recd [illegible]

(88)

State of Tennessee,
Cocke County, E. E. Fulkerson Notary
Public for the County and State afore-
said do certify that I am well Divine
the wife of J. T. Divine whose name
is signed to the within writing
bearing date the 19th day of December
1877 personally appeared before me in
the County aforesaid and being ex-
amined by me privily and apart
from her husband and having the
writing fully explained to her
she the said Cordelia Divine acknow-
ledged the said writing to be
her act and declared that she
had willingly executed the same
and does not wish to retract it.
Given under my hand and seal of
office this 19th day [illegible]
My time of office expires on 1st, 1879.
E. E. Fulkerson Notary Public
for Cocke County Tenn.

E. E. Fulkerson
Notary
Public
Cocke Co.

[illegible]

[illegible] the
Rotten day of the [illegible]
[illegible] the [illegible] day Dec. 19th 1877
between [illegible]

1891

[illegible] at the first part
and the [illegible] Road Company
of Ellwood City, was filed in
filed in the office and was [illegible]
to record when the [illegible]
[illegible]
[illegible]

[illegible] T. [illegible]

Mr. [illegible] Clerk of the County
Commissioners, [illegible] are hereby
authorized to enter a release when
the [illegible] shall prove themself
[illegible]
[illegible] of the [illegible] as the legal
[illegible] have been paid in full
[illegible]

[illegible] T. [illegible]

Inquired the County Commissioners [illegible]
[illegible] Adam T. [illegible] Clerk
of the County Commissioners that the
[illegible] [illegible] [illegible]
[illegible] [illegible] [illegible]
[illegible] [illegible] [illegible]

Eastern Kentucky
Fruit Growers
C. - Division
Week Book 23 Pg.

(99)

They then introduced G. B. Cockrell, who proved that he is & was the agent and general manager of the Eastern Kentucky Land Co. That he purchased the west end of the Fields Survey which lies west South & east of Lemuel Gap from J. W. Divine & wife and took from them what he and they supposed was a conveyance therefor that he went into the possession of the same under said Divine, and built a house upon & moved in and lived there on and before July 12th 1888. That he is a practicle surveyor & has twice aided in running the west end of the fields survey and that the same covers the land in controversy as run by him & G B. Johnson. and that the deed of G. G. Cottrell ~~and~~ Samuel G. Jones extends into the Fields survey from 1/8 to 1/2 acre at and near the Store house occupied by G. G. Cottrell & the house stands on this small piece

1911

That the paper a copy of which is before him was made & executed on the ground at Cumberland Gap by A. A. Arthur Trustee or General Manager of the American Association and was given to A. L. Pridemore to hold and afterwards it was agreed to make type written copies of the same and the original had been sent to his company for acknowledgment so as to have the same recorded that he heard Charles Seymore the atty for the Pltff and the American Association say in the spring of 1889 that he had said paper, and that witness does not now know where it is, but that he does know the paper in his hand is a true copy except the signature & few interlineations that after the execution of said paper on 12 July 1888 and on that day the Pltff give him possession, He continued as General manager, to use occupy and control the land lying to the North of the compromise

(92).

line sold lots off of it and built houses upon it some of which are west of the Rail Road Tunnel, that the American Association sent its surveyor one Murwyn and he witness for his company & said Merwyn & C. B. Johnson & others in a few days probably the next day ran the compromise line, and put up stones thereon around to the Kentucky line as described in said paper, That soon thereafter the said Jeff had put on said compromise line a wire fence which runs partly west of the Tunnel on said line, That in a few days after said compromise Witness as the Manager of his Company went to G. G. Cottrell & James Rollins and told them of the compromise and the possession give him and made an agreement with them to remain as his tenants in said houses & hold them for his Company and this was before May 1889 the time spoken of by C. H. Rogers & others who

(93)

Robert H. Jones undertook to turn over the possession thereof to said Rogers & Wm Arthur as Atty & agents of the Plff. That there were several houses on the land in dispute some of which stood west of the Tunnel that the houses west of the Tunnel had been built by him & others, on the east he had sold the lots & others built upon them, That after the Compromise the Plff. moved off some tenants he had on the Fields Survey and east of his witnesses house that since he had gone into the possession of the Fields land he had continued to occupy a part claiming the whole and that all the land in the Plffs writ was in the Fields Survey and was enclosed except a small lot of 2 or 3 acres around the Store & dwelling house which was cleared but not fenced nor had there been any fence around it for several years only a small lot used

(94)

calf lot the fence of which was some times up & some times down, That his Company claimed the west end of the Fields survey including the store house & dwelling house occupied by the defendants, but they did not claim any land outside the Fields Survey upon which he had lived since 1887.

Witness further states that the paper refered to above, he had been informed by letter by the secretary of his Company had been forwarded to witness by mail but he did not receive it, but afterward Charles Bygnore make the statement above, But he had never had the actual possession of the store house & dwelling & the lots on which they stand exept under the agreement made with the defendant after the compromise of July 12th 1884 as above stated.

The defendant then introduced

C. L. Predemore who proved the execution of the paper dated July 12" 1888. by Benj. Cockerell President &c & A. A. Arthur as believed signing as general manager. That the heard Seymore counsel for the Pelff say in the spring of 1889 that he had said paper. That he had several times demanded the paper from Seymore and endeavored to get it from the Pelff or his atty but could not they saying they could not find it, that the paper before him was a true copy except the four interlineations and the signature was lacking.

The defendant then introduced the paper in the words & and figures following to wit:

Memoranda of a contract made and entered into this day by and between, The American Association" Limited of the first part, and the "Caste in Kentucky Land Company," of the second part

1961

Witnesseth, that whereas there has arisen a controversy as to the true line of the contracting parties between the Jones survey situated mostly in Claiborne County, Tenn, and owned by the party of the first part, and the Fields Survey situated in Lee County Va and owned by the party of the second part, both at and near Cumberland Gap the lines being adjacent, and whereas there has heretofore been two lines run differing about 3 poles, which marks the south line of the Fields survey, and the North of the Jones survey; and whereas the party of the first part are now actively engaged by its employees in the construction of a tunnel under Cumberland Mountain and through the said Gap, for rail road purposes, passing partly over the lands of the party of the second part; Now in order to fully and finally adjust and set the said lines, it is agreed

that said first named lines shall
be re-run marked equidistant
from the lines heretofore claimed,
and the new line well marked, thus
equally dividing said strip of three
poles, and said new line is to be
extended on this location 100 poles
westwardly from where it crosses
the mill branch, and thence on
the calls of the title papers to the
Kentucky line, And such line
shall be and remain the true
line between said parties, And
the party of the first part re-
linquishes and quit claim to
all title or possession to the
lands known as the Fields sur-
vey to the North of said line.
And the party of the second part
quits claim to all the Jones lands
to the South of said line except
their mill and water rights which
are to remain as at present.
The party of the second part fur-
ther agrees and binds itself not
to enjoin or by other legal proceed-
ings, stop or impede the prosecution
of the work on said tunnel so

(98)

far as their lands are concerned. But this agreement is to be construed to extend no further than the mere prosecution of the work to completion. All other rights vested in either party are reserved. And the party of the second part further agrees that the party of the first part may grade construct, open and use a road way through, over, and across their lands on the face of the Mountain west from the present Tennessee road. Dated at Cumberland Gap this July 12th 1888.

Witness.

And these being all the facts proved, after the agreement of Counsel, the Jury found the following Verdict of the Jury. (See Eighth page for Verdict) And thereafter the defendant after his motion in arrest of Judgment and for a new trial because

of insufficiency of said verdict moved the court to set aside said verdict on account of the misruling of the court pending the trial as shown by his bills of exceptions in this cause and because the same was contrary to law & the evidence. But the court overruled said motion and refused to grant a new trial to the defendants. To which action of the court in so refusing to set aside said verdict & grant him a new trial the defendants by their counsel excepts and prays this his exception to be signed sealed & made a part of the record which is done.

James W. Orr (Seal)

Jc 1
(100)

[illegible]

[illegible]

[illegible]

(101)

to write.

(102)

No. 3.

[illegible] Court [illegible] Copy [illegible] No. 3)

3 The Court-house [illegible] of [illegible] verdict from the [illegible] clause that the plaintiff [illegible] Jenkins [illegible] 12 day of [illegible] 18[illegible]

(104)

[illegible] Court on that day [illegible]
dered us give up such possession to
the Eastern Kentucky Land Company
and that in pursuance of that agree-
ment the said Eastern Kentucky Land
Company took possession of the said
[illegible] C. J. J. Cornett
[illegible]
[illegible]
[illegible]

(105)

[illegible]

[illegible] of the court in this cause
[illegible] for the plaintiff [illegible]
and because [illegible] and
[illegible] that [illegible] that time the
said [illegible] had the [illegible] possession of the same [illegible] on the 17th of
July [illegible] transferred and delivered
said possession to the Cassidy
Lumber Company [illegible] that [illegible]
[illegible] under said [illegible]
[illegible] against the possession of the
plaintiff and demanded and received
the disputed possession under said
contract. And if the jury believe
from the testimony in the cause that
the defendants, at the time
the plaintiff made his last [illegible]

106

the conflicting claims of the Central Pacific Land Company, the said land claimed by the plaintiff, while the defendants were [illegible] of the land [illegible] and [illegible] ought to pay over the [illegible]

[illegible]

/

107

[illegible] it [illegible] and after [illegible]
and closed his case the defendant to maintain the
issue on his part offered to read the [illegible]
from the Commonwealth to Stephen Wells
the order of the Court appointing Clarence Hudson
Commissioner of Assignments [illegible]
under the deed of said Anderson to said
[illegible] Trustee [illegible] Co., the [illegible]
[illegible]

I [illegible]
[illegible] Collins [illegible]
[illegible] under the [illegible] the [illegible]
[illegible] the deed [illegible]
[illegible] to [illegible] Co [illegible]
[illegible] dated [illegible]
[illegible] to [illegible]
[illegible] to be added to
[illegible] Exhibits contained in
[illegible] and the petition of Co [illegible]
[illegible] the [illegible] Exhibits
[illegible] Trustee [illegible] dated
May 12th 1888. all of which are mentioned
[illegible] in the defendants bill of
Exceptions No 4, the reading of each [illegible]
[illegible] one of which the plaintiff [illegible]
but the Court overruled and [illegible]
[illegible] admitted each to be read to [illegible]
[illegible] the Court is [illegible] read

1881

A. A. Arthur
vs
G. G. Cotrel & James Rollins

Be it remembered upon the trial of this cause, the defendants offered to read, as evidence and was permitted to do so the deed of Samuel C. Jones & Eliza Jones his wife to J. W. Divine bearing date on the 28 day of Sept 1881. in the [illegible] & figures following to wit: (see Page 77 for copy of said Deed)

And after the same had been read the defendants then by their counsel moved the court to exclude the last will and testament of the said Samuel C. Jones and the deed of Eliza Jones his wife & R. H. Jones & others his heirs at law as evidence from the Jury because by the said Jones deed to J. W. Divine he had conveyed as alleged by the deft. the same by covenants of general warranty

But the court overruled said motion [illegible] and refused to exclude the same & the said will & deed to remain as evidence

of title in the plff. To which action of the court the defendants by their counsel excepts & prays this their exception to be signed sealed & made a part of the record which is done.

James W. Orr. (seal)

(109)

No 3

Alexander A. Arthur Trustee

vs

G. G. Cotrell et al

Be it remembered that upon the trial of this cause and after the agruements of Counsel for the plaintiff & defendants had been concluded the defendants by their Counsel moved the court to instruct the jury in the words & figures following to wit:-

The court further tells the jury that if they believe from the evidence in this cause, that at the sale of the undivided lands to John G. Newlees heirs by commissioner C. T. Duncan & David Miller in the chancery cause of Smith Crabtree vs T. S. Elyet al in evidence before them Samuel C. Jones was present at said sale and was the purchaser and that said sale embraced and covered the land in controversy and that he did not then claim & set up a claim thereto; but took & accepted a deed therefor; and afterwards the said Samuel C. Jones sold the same land and conveyed it to J. W. Divine by deeds of covenants of general warrenty & that said Jones did not claim at said sale, any land they sold, and that he was present & knew that they were being sold as the undivided lands of the heirs of John G. Newlees & did

not set up his claim to the land at the time of the sale and afterwards conveyed to Diane as above all lands we purchased. The law estops him and those claiming under him from ever setting up a claim thereto. The law holding that if a man stands by and sees his property sold as the property of another and acquiesses in such sale without setting up his claim. The law estops him and those claiming under him &c say if he would not speak when he could he must be silent when to speak would prejudice others. But the court refused to give said instruction or modify the same further than was done by the instructions given. To which action of the court the defendants by their counsel except &c. pray this their exceptions to be signed, sealed &c made a part of the record which is done.

James N. Cox. Seal

Be it remembered upon the trial of the case and after the verdict had been rendered by the jury the difendants pro the Court to set aside the verdict and grant them a new trial because verdict was not sufficient to enable sheriff to deliver the possession there of and because the same was too vague and indefinite and was not according to the law but the Court overruled said motion and entered up the judgement for the plaintiff. the verdict is in the words and figures following: "See Page 8 for verdict" But the Court overruled the motion and refused to grant a new trial to which action of the Court the defendants by their Counsel excepts and prays this the exceptions to be signed, sealed and made a part of the record which is done,.

James N. Orr. Esq

Virginia Lee County to wit
I John R. Gibson Clerk of the County Court of Lee County do certify that the foregoing transcript is a true copy of the record in the case of A. A. Arthur Trustee against G. G. Cotrell and James Rollins. Given under my hand & official seal this Apr. 12 1891
John R. Gibson clerk.

A. N. [illegible]

vs } Copy of Record

Cottrell & Rollins

1893 June Term Docketed
order Survey & Contd

"2"

"2"